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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44601
Plaintiff-Respondent,)	
)	Canyon County Case No.
v.)	CR-2016-2167
)	
JASON RAY STUDER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Studer failed to establish that the district court abused its discretion, either by imposing a unified sentence of seven years, with one and one-half years fixed, for possession of a controlled substance, or by denying his Rule 35 motion for reduction of his sentence?

Studer Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Studer pled guilty to possession of a controlled substance and the district court imposed a unified sentence of seven years, with one and one-half years fixed. (R., pp.101-02.) Studer filed a notice of appeal which, under the prison mailbox rule, was

timely from the judgment of conviction. (R., pp.126-30, 170.) He also filed a timely Rule 35 motion for reduction of his sentence, which the district court denied. (R., pp.123-25, Aug., pp.1-7.)

Studer asserts his sentence is excessive in light of his substance abuse issues, mental health issues, support from family, purported remorse, and acceptance of responsibility. (Appellant's brief, pp.4-7.) The record supports the sentence imposed.

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds

might differ.” McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, “[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The maximum prison sentence for possession of a controlled substance is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of seven years, with one and one-half years fixed, which falls within the statutory guidelines. (R., pp.101-02.) Studer has a long criminal history that includes convictions for 20 misdemeanors and two felonies. (PSI, pp.4-10; see also Aug., pp.4-5.) Studer has also previously spent time in prison, committing the instant offense just 15 months after being released. (PSI, p.10; Aug., p.5.) Studer has struggled with supervision, both in and out of prison; while incarcerated, he had “three major sanctions” for battery and possession of drugs, and he continued to engage in criminal activity and abscond supervision while in the community. (PSI, p.10.) Despite being afforded multiple opportunities to succeed both in prison and in the community Studer has failed to change his criminal thinking. At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Studer’s sentence. (8/29/16 Tr., p.12, L.4 – p.16, L.23.) The state submits that Studer has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Studer next asserts that the district court abused its discretion by denying his Rule 35 motion for reduction of his sentence in light of his family situation and progress

in managing his mental health issues. (Appellant's brief, pp.7-8.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Studer must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Studer has failed to satisfy his burden.

Studer's claim that his girlfriend and son need him is not new information and, in fact, was considered by the court at the time of sentencing. (8/29/16 Tr., p13, Ls.23-25.) Also, Studer's progress in managing his mental health, while laudable, is not information that warrants a reduction of sentence. In its order denying Studer's Rule 35 motion the district court reiterated its consideration of the objectives of sentencing, Studer's lengthy criminal history, his mental health conditions, and his demonstrated inability or unwillingness to conform his behavior to the requirements of the law. (Aug., pp.4-5.) After considering all of the information before it, the court concluded, in an exercise of reasoned discretion,

that the sentence it imposed is necessary to accomplish the goals of sentencing and that any reduction in the fixed portion of the sentence would absolutely send the wrong message to the Defendant. The fixed portion of his sentence was minimal, considering the nature and extent of his criminal history, and it was designed to provide the defendant with an opportunity to once again work on his substance abuse and thinking error issues.

(Aug., p.5.) That Studer would have liked the district court to have reached a different conclusion does not show an abuse of discretion. Studer has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm Studer's conviction and sentence and the district court's order denying Studer's Rule 35 motion for reduction of sentence.

DATED this 21st day of July, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of July, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

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<p>1 with Rising Sun fell through, he made inquiries of Second 2 Chances A/D LLC. It's a place in Eagle, Idaho. If the court 3 places him on probation, which we are going to request the 4 court consider, he could have his probation transferred there. 5 It is a sober living house. And he has a new girlfriend that 6 does not do meth. 7 So, Judge, essentially I have to convince the court 8 that there's something new or different in this instance. And 9 what I'm trying to convince the court there's something new or 10 different is he has a new child that was born about two weeks 11 ago and a new girlfriend that doesn't do drugs. 12 So the defendant has admitted that he has made 13 mistakes in the past. He's not taking things seriously. He's 14 been in and out of prison and everything else. But we're going 15 to request the court allow him the opportunity on probation. 16 If he doesn't follow through, then that's his fault, and he 17 knows what's waiting for him. But this may be something new 18 enough and different enough where he takes responsibility for 19 his actions. 20 Judge, this was a very small amount of meth, .12 21 grams, for personal use. And we would argue he's a danger 22 mostly to himself, not society. 23 Judge, another thing that's significant here is he 24 was out of custody for a number of weeks until, like I say, the 25 bondsman had a problem because somebody wrote a check to the</p> <p>9</p>	<p>1 bondsman, it bounced, so the bondsman picked him up and turned 2 him back in. So he was out for quite a while, it looks like a 3 couple months. He didn't flee the jurisdiction. He didn't get 4 in any kind of trouble. So that shows that he is serious this 5 time and can make it on probation. 6 Judge, we're going to request one of two sentences 7 here. If the court places him on probation or even a rider, 8 we're going to request a three plus four for seven because that 9 will be a lot hanging over his head, and it'll make him look at 10 this real seriously. And if the court does not place him on 11 probation, we're going to request the court, due to the 12 circumstances of this case, impose a one plus six for seven. 13 And, Judge, another factor here that the court can 14 take into account is he's been in jail for 160 days, and he's 15 been in jail on two separate -- or -- 16 Were you on pretrial release the first time? 17 THE DEFENDANT: Yes. 18 MR. SMETHERS: And I believe he was on pretrial release 19 the first time. So I don't see anyplace where the -- where he 20 had problems there. So what I'm trying to say is 160 days is a 21 long time. So the court has his attention. He's dried out and 22 everything else. 23 THE COURT: Thank you. 24 Mr. Studer, anything you wish to say? 25 THE DEFENDANT: This is hard.</p> <p>10</p>
<p>1 THE COURT: You can be -- you can be seated. You don't 2 need to stand up. It's fine. 3 THE DEFENDANT: It's hard with my parents here. I 4 didn't expect them. I'd like to apologize to them. I'm really 5 trying something different. I know I need a lot of help. As 6 far as probation, I need to be intense supervised. I seem to 7 fall off if I fall into the wrong situations, put myself in bad 8 situations, if that. I know my past history speaks for itself. 9 But I'm -- I never thought I would be a father, and I'm a 10 father now. That's something I kept secret from a lot of 11 people, including my parents. So I've -- 12 THE COURT: All right. Are you sure the child's yours? 13 THE DEFENDANT: Yeah, I know it's mine. 14 THE COURT: Because it seemed like the circumstances 15 were such that -- 16 THE DEFENDANT: I put in for a paternity test with 17 Health and Welfare just in case, if anything -- there is a 18 period of time when I was incarcerated that I have my doubts, 19 but I'll hear hopefully soon. 20 THE COURT: Yeah. They can ultimately find that out; 21 right? 22 THE DEFENDANT: She hasn't lied to me before, so she 23 would have no reason to lie to me now. I'd like a chance on 24 probation. And I ask that if I see my P.O., I'll ask him for 25 any options that he can help me out with for -- I don't know</p> <p>11</p>	<p>1 what's best for me. 2 That's all I've got to say, is I apologize. 3 THE COURT: All right. Mr. Studer, thank you. 4 The court has to consider the background and 5 character of the offender and facts and circumstances of the 6 offense. And there are objectives that the court has to look 7 to in every case. And those are the goals of sentencing, 8 punishment or accountability; deterrence, so the message to you 9 and to other people. Third is rehabilitation, identifying what 10 brings a person into the court system with the idea of either 11 requiring them or helping them to address those issues so they 12 don't reoffend or minimize their risk. Fourth and most 13 importantly is the protection of society. 14 Now, Mr. Studer, you know, this is not about 15 whether or not you're a good person or a bad person. It isn't. 16 You've got a lot of challenges, you know, the -- you've got the 17 Social Security disability. You have had, you know, the ADHD 18 and the problems that that's caused and contributed to. 19 And I think that, you know, we're just starting to 20 understand those kinds of things a lot better because there are 21 a lot of people who are in trouble and have been as children 22 and then into adulthood with ADHD, the impulsivity and the 23 difficulty in managing their choices and their behaviors. And 24 then you've got -- you know, you've got your mental health 25 condition with the bipolar. You've got a lot of challenges.</p> <p>12</p>

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<p>1 The education piece.</p> <p>2 And then you got started with drugs. That's also</p> <p>3 not uncommon when people have feelings that they don't know how</p> <p>4 to put into place and they just are trying to find something to</p> <p>5 help them calm down. And so the self-medication aspect of it.</p> <p>6 You've got a -- you've got a bad combination with</p> <p>7 the impulsivity, really, the drug problem, and -- and criminal</p> <p>8 thinking patterns. You've gotten into a bad sort of -- a bad</p> <p>9 circumstance in terms of how you learned to think. Not very</p> <p>10 good problem solving. And part of it is because you were, you</p> <p>11 know, incarcerated so young. But you kept putting yourself</p> <p>12 there.</p> <p>13 The presentence report talks about how -- it said</p> <p>14 that you, you know, provided your presentence questionnaire.</p> <p>15 You answered the questions. It says, he displays limited</p> <p>16 insight, doesn't appear to take much accountability for his</p> <p>17 actions. Mr. Studer justifies his drug use by saying he was</p> <p>18 trying to keep up with life outside the prison, although he</p> <p>19 admits to using while in prison as well.</p> <p>20 It says, he brushes off his ten years of violating</p> <p>21 probation and parole by saying he wasn't interested in abiding</p> <p>22 by the conditions of his supervision because he didn't like to</p> <p>23 be told what to do. Mr. Studer explained he feels he can be</p> <p>24 able to do probation at this time because he has recently had a</p> <p>25 son.</p> <p align="center">13</p>	<p>1 The defendant was out of prison for 15 months</p> <p>2 before he committed the instant offense. And then it talks</p> <p>3 about, you know, some of your plans for where to live. The</p> <p>4 defendant has not found permanent employment, explaining he</p> <p>5 quit working last October because he wasn't being paid enough.</p> <p>6 It says, Mr. Studer's not been successful on</p> <p>7 community supervision in the past and has not taken advantage</p> <p>8 of the programming provided while on a rider or CAPP. His time</p> <p>9 in prison does not appear to have been a deterrent for future</p> <p>10 criminal behavior.</p> <p>11 And then another -- oh, I wanted -- also at the</p> <p>12 pretrial -- you were on pretrial release, but there were some</p> <p>13 affidavits of noncompliance. One was May 6. And it said that</p> <p>14 you violated the rules of pretrial program on 4-29 of '16 and</p> <p>15 5-3 of '16. Jason failed to report to pretrial release for</p> <p>16 drug and alcohol testing. On 5-4-16, the officer attempted to</p> <p>17 contact Jason by phone, and his contact number was</p> <p>18 disconnected. And then there was another affidavit of</p> <p>19 noncompliance on May 31. That was after the -- after the</p> <p>20 pretrial.</p> <p>21 And at the pretrial on May 16 they said the court</p> <p>22 advised the defendant an affidavit of pretrial noncompliance</p> <p>23 had been filed on May 6, 2016, and directed the defendant to</p> <p>24 comply with the reporting and testing requirements as action</p> <p>25 would be taken on any subsequent submissions of noncompliance.</p> <p align="center">14</p>
<p>1 And then the May 31 affidavit was that on 5-20 and</p> <p>2 5-25, Jason failed to report to pretrial release for drug and</p> <p>3 alcohol testing. On 5-27, the officer had attempted to contact</p> <p>4 Jason by phone, and he was unsuccessful. So you weren't</p> <p>5 reporting to get tested while you were on pretrial release, and</p> <p>6 then you ended up getting taken back in by your bondsman.</p> <p>7 So even, Mr. Studer, when all of this was coming</p> <p>8 down on you, raining down on you, you weren't able to comply,</p> <p>9 you didn't comply. And I don't know if that's because you were</p> <p>10 using or what. We don't know. You didn't comply. You didn't</p> <p>11 follow that direction on several occasions. It wasn't just</p> <p>12 once or twice. So there were a lot of problems there.</p> <p>13 And again, this brings me back to what I said. It</p> <p>14 isn't a matter about whether you're a good person or a bad</p> <p>15 person. I -- I know that you have a lot of goals and you feel</p> <p>16 bad. I can tell that you feel bad for -- for what you've put</p> <p>17 your family through. And that was in the presentence report</p> <p>18 too. I think you've got a lot of regret and you want to have a</p> <p>19 different life. I -- I think you're sincere.</p> <p>20 But you've got such a drug problem, and you've got</p> <p>21 a criminal thinking problem. And you also -- and, again, the</p> <p>22 default is back to that lifestyle when things don't go right.</p> <p>23 And they oftentimes don't go right in life.</p> <p>24 So you know, this is a situation where I -- you're</p> <p>25 just not a good candidate for probation. I wish you were. I</p> <p align="center">15</p>	<p>1 wish we had better structure.</p> <p>2 I want you to listen to me. I know you're</p> <p>3 disappointed, but listen to me, because I'm really going to try</p> <p>4 to emphasize probation here. I'm not going to lock you up for</p> <p>5 a long time. But it's -- I've got to be realistic about what</p> <p>6 probation is and what you need. And you are not a good</p> <p>7 candidate for it.</p> <p>8 And you know, in this -- in this case, the State</p> <p>9 agreed to dismiss the persistent violator so that you don't</p> <p>10 have to go for at least five years, because that's what you're</p> <p>11 working yourself up to. Because it is a drug problem</p> <p>12 primarily.</p> <p>13 But you've got to be realistic. And it's important</p> <p>14 that you have the goals. And I -- you know, I hope that if you</p> <p>15 want that baby to be yours that it is and that you can build</p> <p>16 toward that and that hopefully she's the right kind of person.</p> <p>17 Because it sounds like she has her issues too. So you know,</p> <p>18 it's a concern.</p> <p>19 But those -- those are the things that matter in</p> <p>20 life are relationships and having some work that you enjoy and</p> <p>21 that will hopefully pay your expenses and just living your</p> <p>22 life. And it's not too late for you to do that, but you've got</p> <p>23 to prepare yourself better than what you have.</p> <p>24 Now, I am going to give you credit. You're</p> <p>25 entitled to credit for 160 days served because I have to give</p> <p align="center">16</p>

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